

E-Filed 7/15/2010

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

YONG TAN HUANG,

Plaintiff,

v.

TIM BELL, et al.,

Defendants.

Case Number C 10-1640 JF (PVT)

ORDER¹ DENYING MOTIONS FOR
LEAVE TO PROCEED ON APPEAL
IN FORMA PAUPERIS AND FOR
APPOINTMENT OF APPELLATE
COUNSEL; AND STAYING ACTION
PENDING DISPOSITION OF APPEAL

On April 16, 2010, Plaintiff filed a Notice of Removal, apparently purporting to remove the instant action from the Santa Clara Superior Court. The complaint in the instant action alleges that Plaintiff was injured while constructing a deck on the Bells' property. Plaintiff sues the Bells and two state court judges; the claims against the Bells appear to be for negligence, while the claims against the judges appear to be for misconduct in the litigation of the state court action. Plaintiff also filed an application to proceed *in forma pauperis* and two motions seeking recusal of the undersigned on the ground of bias.

On May 26, 2010, the Court issued an order denying Plaintiff's application to proceed *in*

¹ This disposition is not designated for publication in the official reports.

1 *forma pauperis* and motions for recusal. The order advised Plaintiff that if he did not pay the
 2 filing fee within thirty days, the action would be dismissed without prejudice.

3 On June 7, 2010, Plaintiff filed a notice of interlocutory appeal with respect to the May
 4 26 order.² On June 23, 2010, Plaintiff filed motions for leave to proceed on appeal *in forma*
 5 *pauperis* and for appointment of appellate counsel. On July 7, 2010 Plaintiff filed a second
 6 motion to proceed in appeal *in forma pauperis*.

7 Plaintiff's motions are DENIED. Plaintiff has failed to present any facts demonstrating
 8 that the Court's May 26 order was erroneous or that there is any possibility that he could state a
 9 cognizable claim against these defendants.

10 "Absent a stay, an appeal seeking review of collateral orders does not deprive the trial
 11 court of jurisdiction over other proceedings in the case, and an appeal of an interlocutory order
 12 does not ordinarily deprive the district court of jurisdiction except with regard to the matters that
 13 are the subject of the appeal." *Britton v. Co-op Banking Group*, 916 F.2d 1405, 1412 (9th Cir.
 14 1990). Ordinarily, the Court would dismiss the action at this time for failure to pay the filing fee.
 15 However, because the requirement that Plaintiff pay the filing fee arises out of the denial of
 16 Plaintiff's request to proceed *in forma pauperis*, the Court instead will STAY the instant action
 17 pending disposition of Plaintiff's appeal.

18 Plaintiff is advised that he may file applications for *in forma pauperis* status and for
 19 appointment of counsel in the Court of Appeals.

20
 21 DATED: July 15, 2010

22
 23 
 24 JEREMY FOGEL
 25 United States District Judge
 26

27 ² While not all aspects of the Court's May 26 order are appealable, a denial of a motion to
 28 proceed *in forma pauperis* is an appealable order. *Roberts v. District Court*, 339 U.S. 844, 845
 (1950).

Copies of Order served on:

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